

## **VA HIGHLANDS LHRC**

Minutes

August 9, 2022

12:00 PM

Southwestern Virginia Mental Health Institute

### **MEMBERS PRESENT**

Gardner Umbarger – Chairperson

Nancy Munsey – Member

Barbara Bartnik – Secretary

### **OTHERS PRESENT**

Matthew Woodlee, LMFT - SWVMHI

Mykala Sauls – DBHDS Human Rights Advocate

Riley Curran- DBHDS Human Rights Advocate

Brandon Rotenberry – DBHDS Human Rights Facility Advocate Manager

### **CALL TO ORDER**

The meeting was called to order by Gardner Umbarger, chairperson, at 11:54 PM.

### **ROLL CALL/ATTENDANCE**

Those in attendance make introductions. Chair welcomes attendees.

### **APPROVAL OF AGENDA**

A motion to approve the agenda as is was made by Nancy Munsey and Barbara Bartnik seconded, and unanimously approved by all members in attendance.

### **APPROVAL OF MINUTES**

A motion to approve the VA Highlands LHRC minutes from May 10, 2022 was made by Barb Bartnik, seconded by Nancy Munsey, and unanimously approved by all members in attendance.

### **PUBLIC COMMENTS**

Matt Woodlee, LMFT, provided an update about SWVMHI including information on COVID-19 precautions, bed numbers across the state, police drop offs and the utilization of alternative transportation.

### **CHAIR ANNOUNCEMENTS**

None

### **ADVOCATE REPORT AND TRAINING**

Mykala Sauls provided an advocate report. See attached.

### **OLD BUSINESS:**

None

## **NEW BUSINESS**

- SWVMHI Restriction Review (12:12p)
- Mount Rogers CSB- Restrictions of Every Day Life (12:20p)
- Danville-Pittsylvania Community Services- Next Friend Review #1 (12:35p)
- Danville-Pittsylvania Community Services- Next Friend Review #2 (12:45p)
- Blue Mountain Therapy/Mount Rogers Community Services- BTP with restriction (12:55p)
- SWVMHI Appeal (1:10p)

## **CLOSED SESSION**

Upon a motion made by Gardner Umbarger and seconded by Nancy Munsey, the committee entered closed session at 12:10 PM pursuant to Virginia Code §2.2-3711, a.15 and §2.2-37.05.5 for the purpose of discussion of treatment plans.

## **RETURN TO OPEN SESSION**

Upon a motion made by Gardner Umbarger and seconded by Nancy Munsey, and unanimously approved by all members in attendance, the committee returned to open session at 2:30 PM. Each member then certified that, to the best of each member's knowledge, only private business matters, lawfully exempted from statutory open session requirements and identified in the motion by which the closed session was convened, were considered in the closed session, namely to review an Individual's restrictive plan.

A motion to approve the Mount Rogers Next Friend Authorization, Mount Rogers Restrictions, both Danville- Pittsylvania Next Friend Authorizations, and Blue Mountain Therapy's BTP with Restrictions was made by Gardner Umbarger, seconded by Nancy Munsey, and unanimously approved by all members in attendance. The appeal by an individual receiving services at SWVMHI was found to have no violation and recommendations were provided to the facility.

## **NEW BUSINESS (Open Session)**

None

## **MEETING ADJOURNED**

The meeting was adjourned at 2:45 PM by Gardner Umbarger, Chairperson. The next meeting will occur on October 11, 2022.

# **Advocate Report**

## **Advocate Report, Facilities, 2<sup>nd</sup> Quarter**

### **Quarterly ANE and complaint statistics**

For the quarter ending 3/31/2022:

- There were 109 total complaints involving allegations of abuse/neglect/exploitation and 18 of these cases were substantiated.
- There were 185 human rights complaints and 33 of these cases were substantiated.

### **Summary of current Variances for Facilities**

- Central State Hospital has 4 variances all of which expire on 12/31/2022. All four are now pending SHRC approval on 9/29/22 after an LHRC review by Tri-City LHRC. There are no new variances pending.
- Western State Hospital has 2 variances which expire in 2024. There are no variances currently pending.
- Commonwealth Center for Children & Adolescents has 1 variance which will expire in 2023. There are no variances currently pending.
- Virginia Center for Behavioral Rehabilitation has 2 variances which will expire in 2024. There are no variances currently pending.

### **• Updates**

**Behavioral Health Commission** – The Behavioral Health Commission met in Richmond to receive an update on the implementation of STEP-VA. As you know, STEP-VA is the model to implement a specific set of quality community services consistently across Virginia. Our own Dr. Lisa Jobe-Shields, Deputy Director of Community Services, presented to the Commission, along with Jennifer Faison from VACSB and James Pritchett, Executive Director of New River Valley Community Services, and David A. Coe, Executive Director of Colonial Behavioral Health. While we have made progress, we still have work to do to ensure all Virginians have access to a critical and robust set of services across all CSBs.

**ADA Anniversary** – July 26<sup>th</sup>, 2022, marked the 32nd anniversary of the Americans with Disabilities Act (ADA). This landmark legislation works to ensure all people with disabilities have the same rights and opportunities as everyone else. However, our work is far from over. Read the full Presidential proclamation [here](#).

**New Chief Deputy Commissioner** – Ellen Harrison will be starting as the new Chief Deputy Commissioner at DBHDS in September. In addition to being a strong and widely respected leader in our community, Ellen has extensive experience with both public and private sector partnerships, and a deep knowledge of our system on the state, regional, and local levels. Her work at Rockingham CSB, Western State Hospital, and other positions within the regional CSB and private hospital system, along with being a licensed counselor, give Ellen the extensive experience we need in a Chief Deputy as we move forward to bring meaningful and positive change to our system.

## **Program Highlights from the 2021 Annual SHRC Executive Summary**

### *COVID-19 Pandemic Response:*

In April 2021, following the peak of the COVID-19 pandemic, OHR shifted from the majority of operations being virtual and electronic, to resuming field operations face to face. This transition was predicated on several factors, such as serious incident reports of provider/facility outbreaks, guidance from the DBHDS Commissioner and data from the Virginia Department of Health (VDH) and the Centers for Disease Control and Prevention (CDC). As OHR expanded on-site and in person activities, staff conducted pre-screening assessments to identify concerns for infections, and requested that provider/facility staff and individuals (when able) wear masks. All OHR staff were provided personal protective equipment (PPE) to include sanitizer, face shields, foot coverings, masks, gloves, goggles and gowns as appropriate to the location and set up of the onsite activity, and staff were required to be aware of and adhere to real time CDC and VDH recommendations. OHR staff also discussed all provider safety protocols (i.e., expectations regarding temperature screenings and ability to host meetings/reviews outside) prior to going onsite in order to ensure the safest environment for everyone involved. Moreover, some activities continued to occur virtually due to active COVID-19 infections and/or because of lessons learned during the public health emergency where it was clear that a virtual visit provided the same level of quality and oversight as a face-to-face visit, but for example saved travel expense and time for team members.

### *Mission Critical Re-Organization*

In late 2020, the SHRD evaluated the then current and future state of OHR operations and determined a need to address workload issues around the DOJ SA and broader areas of inconsistency across facility and community advocate processes. Through the reorganization of existing OHR Advocate positions and internal recruitment, the Facility Operations and Community Operations teams were established. This reorganization was mission critical in order that OHR could maximize existing resources to continue to ensure rights protections for all individuals receiving services. The OHR Associate Director for Facility Operations oversees the team which consists of a Facility Advocate

Manager who supervises 5 Facility Advocates. These Advocates are divided among each of the 12 DBHDS state operated facilities to include the Virginia Center for Behavioral Rehabilitation, the only facility providing targeted services to sexually violent predators, the Commonwealth Center for Children and Adolescents, the states only Mental Health hospital for children and Southeastern Virginia Training Center, the states only remaining Training Center. This specialized Facility Advocate team champion's compliance by facilities operated by the department with the Human Rights Regulations - enactment of corresponding DOJ SA indicators for SEVTC withstanding, in the same way the Community Operations team does with licensed and funded providers of services. However the Facility Operations team has a focused emphasis on synthesizing system-wide abuse/neglect seclusion/restraint and incident data (reported via the Incident Tracker, PAIRS and CHRIS) as well as ensuring education, training and technical assistance to facility staff (including Facility Directors, Risk Managers and Facility Investigators), collaboration and partnership with facility-specific stakeholders and external oversight bodies such as the disAbility Law Center of Virginia and the Office of the State Inspector General.

### *Facility Notice of Violation*

The purpose of the Violation Letter is to document the way state operated facilities acknowledge Human Rights violation(s) and identify and implement appropriate corrective action(s), in accordance with timelines outlined in the Human Rights regulations. The work of correcting, mitigating and preventing

abuse occurs after the identification of a violation. The assurance of this work is the responsibility of the Advocate assigned to the facility and is reflected in the substance of the Violation Letter process. As of January 2021, Notice of Violation letters were issued for Human Rights violations identified through the following processes and for the following reasons (including but not limited to):

- DI 201 investigations: All substantiated findings to include Abuse, Neglect and Exploitation, as well as any other regulatory violation resulting from the investigation. Note - following an unsubstantiated finding, the Advocate may issue a Notice of Violation letter based on their independent review and determination of a violation.
- During routine Facility Advocate activities such as policy reviews, AIM visits, and Facility Look-Behinds. Examples of observations that would result in a Notice of Violation include failure to properly display the Human Rights poster; failure to obtain and properly maintain evidence of informed consent; failure to maintain current Human Rights policies and procedures.
- Pursuant to the regulatory oversight and due process responsibility of the LHRC: For example, failure to follow procedures concerning the approval of: Restrictions, Behavioral Treatment Plan's; Human research; and Next friend designations and as a result of a Findings and Recommendations following a Fact-Finding Hearing.
- Identified Trends Involving: Duplicate substantiated Human Rights complaints that point to a systemic failure or concern; Late Reporting to include failure to report allegations of Abuse/Neglect in CHRIS and/or failure to provide the results of the investigation within the required timeframes.

Since July 1, 2021, there have been 92 Notice of Violation letters issued across all 12 state hospitals and centers. HDMC and PGH did not have a Notice of Violation during this review period. The remaining 10 facilities had at least one.

#### *Revision of Peer-to-Peer Incident Reporting in State Facilities*

In June 2021 the OHR issued a memorandum to state operated facility directors intended to revise and clarify the reporting and investigating requirements for Peer-to-Peer (P2P) incidents in state operated facilities. The impetus for clarification was based on information collected through two years of facility look behinds and the requirement for state operated facilities to investigate all allegations of abuse and neglect in accordance with DI 201 and the Human Rights regulations. The OHR identified issues related to over-reporting of P2P incidents as neglect in some state facilities and under-investigating of these incidents in other facilities. The guidance identified criteria and set a threshold for determining when P2P incidents should be reported into the department's Computerized Human Rights Information System (CHRIS) and investigated as allegations of abuse or neglect. In addition, expectations were established regarding the initial review and documentation of P2P incidents in the Incident Tracker, and potentially in PAIRS, in accordance with DI 401. Data detailed below seems to reflect the success of this action to ensure more accurate information regarding alleged and identified violations specific to incidents involving peer-on-peer aggression.

#### *Substantiated Abuse Response*

In order to assure a safe environment for all individuals receiving services and to ensure follow-up on all substantiated abuse allegations, OHR continued execution of the A.I.M. Protocol. High priority cases, defined as any allegation of sexual assault, restraint with serious injurie(s), and physical abuse with serious injurie(s) required an immediate Advocate response to include a site visit within 24 hours of notification. The Protocol further defines the Advocate response of Assessing and assuring safety for the

identified individual, as well as other individuals receiving services; Initiating the department's complaint resolution process and Monitoring provider follow up through verification that the provider/facility has completed an investigation and implemented appropriate corrective action(s). This is the first year OHR attempted to collect data specific to the number of AIM "visits" (virtual and in person, to include immediate follow up within 24 hours and follow up within 30 days based on the determination of a violation) and there were approximately 480 AIM24 and AIM30 "visits". We anticipate completion of a Data Warehouse report coupled with calculated documentation to continue to inform the effects of this practice.

### *Inter-Agency Collaboration*

In theory, all allegations of abuse reported to APS or CPS involving DBHDS-licensed or funded programs and state operated facilities should also be reported to OHR via CHRIS. In practice, however, providers do not always report incidents in a timely fashion. After years of interdepartmental collaboration, a joint protocol between Department of Social Services (DSS) and the Department of Aging and Rehabilitation Services (DARS) now facilitates a process for localities to send APS and CPS reports via secure email, fax, or US Postal Service that are triaged, tracked and trended by OHR. DBHDS providers are contacted regarding their failure to report abuse and advised about initiating the complaint resolution process. Citation is also recommended through the Office of Licensing when any violation is identified.

In FY22, OHR received and reviewed a total of 1,119 APS and CPS reports directly from one of 120 DSS localities across the Commonwealth. Of these, 865 alleged abuse, neglect or exploitation involving a licensed community provider or state operated facility. Initial review by the OHR revealed that 226 of these reports were not entered into CHRIS by the provider/facility. Additional OHR follow up directly with provider and facility staff as well as involved individuals determined that 193 of these reports met the criteria for a CHRIS report (in 33 instances, the provider was unaware of the allegation and appropriately entered the report into CHRIS and investigated the allegation upon notification from OHR staff). Of the 160 known allegations that were not reported - which is explicitly the reason for this process - there were 53 violations identified. As a result, the OHR partnered with the Office of Licensing to issue 28 late reporting citations and 25 citations acknowledging substantiated abuse/neglect.

### *Statewide Provider Training Strategy*

Throughout 2021 OHR remained committed to providing system-wide training opportunities to promote literacy regarding individuals' assured rights and corresponding facility/provider duties. OHR provided a series of virtual training opportunities with companion resource materials available on the OHR webpage such as training slide decks, audio/video recordings, and FAQs. During FY21 OHR Advocates and Managers provided over 40 distinct consultation and training sessions attended by 91 licensed-provider and facility staff. By way of the OHR Training and Development Coordinator, OHR facilitated 21 statewide training seminars to approximately 1,865 licensed provider & facility staff participant and administered roughly 1,337 CEUs.

Training sessions offered statewide included the following topics:

- Reporting in CHRIS: Abuse, Neglect, and Human Rights Complaints (*with a parallel training for DBHDS Facilities*).
- Restrictions, Behavioral Treatment Plans, & Restraints.
- Investigating Abuse & Neglect: An Overview for Community Providers (*with a parallel training for DBHDS Facilities*).
- Human Rights Regulations: An Overview

*Abuse/Neglect and Human Rights Complaint Statistics (July 1, 2021 – June 30, 2022)*

<b>FY 2022 Human Rights Data Reported by Community Providers</b>			
Total Number of Human Rights Complaints			941
Total Number of Complaints That Resulted in a Violation of Human Rights			108
Total Number of Allegations of Abuse, Neglect, or Exploitation			10,237
Total Number of Substantiated Allegations of Abuse, Neglect, or Exploitation			1,049
Substantiated Allegations by Type		Exploitation	21
Physical Abuse	100	Neglect	743
Verbal Abuse	83	Neglect (Peer-to-Peer)	125
Sexual Abuse	11	Unauthorized use of Restraint	52
Resolution Levels for the 941 Human Rights Complaints and 10,237 Allegations of Abuse, Neglect, or Exploitation			
Director and Below	12,169	State Human Rights Committee	5
Local Human Rights Committee	9	DBHDS Commissioner	0

In FY22, there were 941 human rights complaints involving licensed community programs, including Community Services Boards. 108 of these complaints, or 11% of the total, resulted in a violation. There were 10,237 allegations of abuse, neglect, or exploitation (ANE) reported with 1,049 or 10% of the total, substantiated following the provider investigation and OHR review. This is a 2% increase in the overall number of substantiated allegations when compared to FY21.

There was an overall increase in allegations and identified violations for FY22. While Neglect is routinely the largest category of alleged and substantiated human rights violations, it is notable that the number of allegations substantiated resulting from peer-on-peer aggression increased from 75 to 125, and substantiated allegations of sexual abuse nearly doubled, going from 6 to 11. There are also double digit increases for alleged and substantiated allegations of verbal abuse and unauthorized uses of restraint. These increases may be the natural upswing of more intentioned reporting now that providers are recovering from staffing shortages following the slight dip in reporting during the COVID-19 emergency health crisis.

*Abuse/Neglect and Human Rights Complaint Statistics (July 1, 2021 – June 30, 2022)*

<b>FY 2022 Human Rights Data Reported by State Hospitals and Centers</b>	
Total Number of Human Rights Complaints	790
Total Number of Complaints That Resulted in a Violation of Human Rights	94

Total Number of Allegations of Abuse, Neglect, or Exploitation				537
Total Number of Substantiated Allegations of Abuse, Neglect, or Exploitation				85
<i>Substantiated Allegations by Type</i>		Exploitation	3	
Physical Abuse	25	Neglect	25	
Verbal Abuse	22	Neglect (Peer-to-Peer)	2	
Sexual Abuse	2	Unauthorized use of Restraint	8	
Resolution Levels for the 790 Human Rights Complaints and 537 Allegations of Abuse, Neglect, or Exploitation				
Director and Below	1,310	State Human Rights Committee	17*	
Local Human Rights Committee	3	DBHDS Commissioner	1	

\*14 of the 17 complaints resolved at the SHRC level were reviewed by the SHRC Appeals Subcommittee per a variance allowing alternative procedures for addressing complaints by individuals in maximum security at CSH and residents of VCBR, when the individual is not satisfied with the director's response.

In FY22 there were 790 human rights complaints involving state operated hospitals and centers, 94 of these complaints, or 11% of the total, resulted in violations. There were 537 allegations of ANE involving state operated facilities and centers, wherein 85 (16% of the total) were determined after facility investigation and OHR review to be substantiated. When compared to FY21, there was a marked decrease in the number of reported allegations of ANE. OHR believes the revised guidance provided to state facilities in June 2021, concerning reporting and investigating procedures for peer-on-peer aggression (Neglect P2P), accounts for much of this decrease. By way of explanation, there were a total of 2,681 allegations of ANE in FY21, of these 2, 219 alleged Neglect P2P. In FY22, however, there were 115 reports of Neglect P2P which after investigation by the facility and OHR review, resulted in 2 violations (compared to the 0 in FY21).

A critical function of the SHRC is to serve as the final step in the DBHDS Human Rights complaint resolution process. Of the 12, 505 total complaints (including ANE) the SHRC heard a total of 22 complaints on appeal. This is less than 1% and a brilliant indicator of resolution to individual complaints at the lowest/earliest level of the process. The SHRC commends all who worked together to resolve these issues.

### *Conclusion*

The OHR would like to acknowledge and thank the 90+ citizen volunteers serving on each of the 16 LHRCs and the SHRC for their tremendous effort in support of individuals receiving services and DBHDS Human Rights program at large. OHR is hopeful about the future of rights protections, sustained by the commitment of courageous and compassionate staff and volunteers.

**- Upcoming Events**

Visit the OHR page on the DBHDS website for updated training opportunities. Please see below for upcoming statewide training opportunities between now and December 13, 2022.

<p><b>Tuesday 8/9/2022</b></p> <p><b>FACILITIES ONLY</b></p>	<p>10:00a – 12:30p</p>	<p>Reporting in CHRIS</p> <p><i>This training is designed as a review of the Department’s web-based reporting system, regulatory mandates regarding reporting, and facility-specific human rights processes.</i></p> <p><a href="#"><u>REGISTER HERE</u></a></p>
<p><b>Thursday 8/18/2022</b></p>	<p>10:00a- 12:00p</p>	<p>Restrictions, Behavioral Treatment Plans, &amp; Restraints</p> <p><i>This training is designed to educate the learner on regulatory requirements related to the use of restrictions, behavioral treatment plans, and restraints.</i></p> <p><a href="#"><u>REGISTER HERE</u></a></p>
<p><b>Thursday 9/8/2022</b></p>	<p>10:00a- 12:00p</p>	<p>Investigating Abuse &amp; Neglect: An Overview for Community Providers</p> <p><i>This training is designed as an overview of the investigative process, specific to the investigation of abuse and neglect.</i></p> <p><a href="#"><u>REGISTER HERE</u></a></p>
<p><b>Thursday 9/15/2022</b></p>	<p>9:30a - 12:30p</p>	<p>The Human Rights Regulations: An Overview</p> <p><i>This training is designed to provide the learner an in-depth review of the Human Rights Regulations. Providers will increase their understanding of</i></p>

		<p><i>the Office of Human Rights processes and the responsibilities of the provider as mandated by the Human Rights Regulations.</i></p> <p><a href="#">REGISTER HERE</a></p>
<p><b>Tuesday 9/20/2022</b></p> <p><b>FACILITIES ONLY</b></p>	<p>10:00a – 3:00p</p>	<p>Facility Investigation Training (FIT)</p> <p><i>This training is designed for new and seasoned facility investigators alike. The training will cover human rights processes, the DI 201, and investigative process.</i></p> <p><a href="#">REGISTER HERE</a></p>
<p><b>Thursday 10/13/2022</b></p>	<p>9:30a- 12:30p</p>	<p>Reporting in CHRIS: Abuse, Neglect, and Human Rights Complaints</p> <p><i>This training is designed to educate the learner on the human rights complaint process and provider reporting requirements specific to abuse and neglect allegations. The learner will increase their understanding of CHRIS and the Human Rights Regulations regarding human rights complaints and reporting.</i></p> <p><a href="#">REGISTER HERE</a></p>
<p><b>Thursday 10/20/2022</b></p>	<p>9:30a- 12:30p</p>	<p>Restrictions, Behavioral Treatment Plans, &amp; Restraints</p> <p><i>This training is designed to educate the learner on regulatory requirements related to the use of restrictions, behavioral treatment plans, and restraints.</i></p> <p><a href="#">REGISTER HERE</a></p>

<b>Thursday 11/17/2022</b>	10:00a- 12:00p	<p>Investigating Abuse &amp; Neglect: An Overview for Community Providers</p> <p><i>This training is designed as an overview of the investigative process, specific to the investigation of abuse and neglect.</i></p> <p><a href="#">REGISTER HERE</a></p>
<b>Thursday 12/8/2022</b>	9:30a – 12:30p	<p>The Human Rights Regulations: An Overview</p> <p><i>This training is designed to provide the learner an in-depth review of the Human Rights Regulations. Providers will increase their understanding of the Office of Human Rights processes and the responsibilities of the provider as mandated by the Human Rights Regulations.</i></p> <p><a href="#">REGISTER HERE</a></p>
<b>Tuesday 12/13/2022</b>  <b>FACILITIES ONLY</b>	10:00a – 3:00p	<p>Facility Investigation Training (FIT)</p> <p><i>This training is designed for new and seasoned facility investigators alike. The training will cover human rights processes, the DI 201, and investigative process.</i></p> <p><a href="#">REGISTER HERE</a></p>

### **2022 SHRC Meetings**

The SHRC will be meeting on the following remaining dates in 2022. For details regarding meeting information, please reach out to your assigned Advocate.

May 19, 2022

June 23, 2022

August 18, 2022

September 29, 2022

November 3, 2022

December 8, 2022

### **LHRC Trainings**

We have started conducting quarterly virtual LHRC trainings for our assigned LHRCs. The trainings are recorded so that LHRC members can access the trainings and take competency tests to ensure they reviewed and understood the materials. Your advocate team is happy to provide you with continued training dates during the upcoming year!